IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10270 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANGARAM JAISINGBHAI SAWANT

Versus

BARODA RAYON CORPORATION LTD

Appearance:

1. Special Civil Application No. 10270 of 2004

MR AK CLERK for Petitioner No. 1-27

MR GANDHI for NANAVATI ASSOCIATES for Respondent

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/04/2005

ORAL JUDGEMENT

1. RULE. Mr.Gandhi, learned counsel waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates appearing for the

parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioners have challenged the order passed by the appellate authority under the Payment of Gratuity Act, 1972, dated 8-7-2004 passed in Appeals No.2 to 28/2004.

3. Short facts leading the present petition are that the respondent herein-the employer had earlier filed a group of petitions being Special Civil Application No.12965/2003 and allied matters before this Court challenging the order passed by the controlling authority under the Payment of Gratuity Act passed on 19-7-2000. The said group of petitions came to be disposed of by a decision dated 23rd February, 2004, mainly on the ground that a statutory appeal is available against the order passed by the competent authority under the Payment of Gratuity Act. Learned Single Judge also observed in paragraph 8.3 of the said decision that the appellate authority shall take up the hearing of the appeal and shall decide all contentions, including the contention on the question of limitation as well as on merits of the orders of the controlling authority, after hearing both the sides and the decision shall be rendered as early as possible preferably within a period of three months from the date on which the matter is taken up for hearing. In paragraph 8.5 of the decision, the learned Single Judge once again observed that it is also clarified that all contentions are open. In paragraph 8.6, it was recorded that it will be for the parties to raise all contentions available under the law before the appellate authority.

3.1 The respondent herein approached the appellate authority. The petitioner raised a contention with respect to the maintainability of the appeals on the ground of limitation. This issue was decided by the appellate authority in its impugned order in which relying on the observations of the learned Single Judge of this Court in his order dated 23rd February, 2004, to the effect that it will be open for the petitioner to prefer appeal within a period of three weeks from the date of the order before the appellate authority, the appellate authority turned down the objection of the petitioners herein with respect to the question of limitation.

3.2 The petitioners being aggrieved by the said order of the appellate authority have filed the present petition.

4. Though it is true that in the order dated 23rd February, 2004, learned Single Judge did observe that it will be open for the petitioner therein, i.e., the present respondent to prefer an appeal before the appellate authority within a period of three weeks, the said observation cannot be seen in isolation. When the learned Single Judge had made it abundantly clear at various places in the order that the appellate authority shall take up and decide all contentions including the contention on the question of limitation, I do not see any intention on the part of the learned Single Judge to lift the rigours of the provisions of limitation for filing appeal. The view of the appellate authority that since the appeals have been presented within three weeks as provided by the learned Single Judge of the High Court in his order dated 23rd February, 2004, it is not necessary to examine the question of limitation under the Payment of Gratuity Act, is not correct.

5. In the result, the petition is allowed. Impugned order dated 8th July, 2004, passed by the appellate authority is quashed and set aside. The appellate authority shall proceed further with the hearing of appeals No.2 to 28/2004, including deciding the question of limitation as raised by the petitioners. The appellate authority shall endeavour to dispose of appeals as far as possible within a period of two months from the date of receipt of copy of this order.

6. With these directions, the petition is allowed. Rule is made absolute to the above extent. No order as to costs.

(AKIL KURESHI, J.)
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